THE HON'BLE SRI JUSTICE C.V. RAMULU

Wednesday, the 17th day of January, 2007

W.P.No.3700 of 1997

Between:

A.S.N. Raju & others … Petitioners

and

The Chairman & Managing Director,
The Singareni Collieries Co.Ltd.,
Kothagudem, Khammam District
and others … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.3700 of 1997

ORAL ORDER:

This Writ Petition is filed seeking a Mandamus declaring the action of the respondents in not considering the petitioners' cases for promotion to the post of Charge Hand (Mechanical) Grade 'C' as arbitrary and illegal and to direct the respondents to permit the petitioners to appear for selection test and consider their cases for promotion to the post of Charge Hand (Mechanical) Grade 'C' on par with other candidates and effect promotions accordingly.

It is the case of the petitioners that they have passed ITI Examination and were appointed in the respondent-company long back. They were promoted as Fitter (Category VI) with effect from 1-3-1989. The cadre scheme for the Tradesmen including the Fitters has been framed in accordance with the Memorandum of Settlement dated 3-3-1989. Clause (viii) of the said Memorandum of Settlement stipulates the criteria for promotion to the post of Charge Hand Grade 'C'. According to the petitioners, they are fully qualified and eligible for being promoted to the post of Charge Hand (Mechanical) Grade 'C'. Further, keeping in view the Settlement dated 3-3-1989, a clarification dated 14-6-1993 was issued prescribing guidelines to fill up the vacancies of Charge Hand (Mechanical) Grade 'C'. As per the Memorandum of Settlement dated 3-3-1989 and the Circular dated 14-6-1993, all the eligible candidates should be called for the test consisting of written and practical and also

assessment reports having 25, 50 and 25 marks respectively. Only those candidates, who secure 56% of marks in the above test, shall be eligible for promotion basing on the area-wise seniority in the substantive post. Now, there are certain vacancies of Charge Hand (Mechanical) Grade 'C' in Ramagundam-II Area. As such, the 2nd respondent has called for a selection test on 26-2-1997 for Category VI Fitters of Rg-II Area to fill up the post of Charge Hand (Mech.) Grade 'C'. Though all the petitioners are fully qualified to hold the post, for the reasons best known to the respondents, they were not asked to appear for the test; whereas, some others, who are similarly situated and juniors to them, were asked to appear for the test. Therefore, the action of the respondents in not permitting the petitioners to appear for the test for the post of Charge Hand (Mechanical) Grade 'C' is arbitrary and illegal. Hence, this Writ Petition.

A detailed counter affidavit has been filed by the respondents denying the allegations made by the petitioners. It is asserted that from Clause (viii) of the Memorandum of Settlement dated 3-3-1989, it is clear that the eligibility for considering for promotion to the post of Charge Hand Grade 'C' will only apply for the Fitters in Category VI, but not for the Fitters, who were placed in Category VI on completion of 9 years service as per the cadre scheme. There was a clear mention in Clause (viii) of Memorandum of Settlement that though they were placed in Category VI, they will continue to perform Category V jobs and accounted accordingly. However, it is admitted that the petitioners are possessing ITI qualification in the Trade of Fitter and were appointed by the respondent-company and subsequently promoted to different categories. It is also admitted that the petitioners were placed in Category VI (Secured Placement under the Cadre Scheme) with effect from 1-4-1989, but not promoted to Category VI

with effect from 1-3-1989 as stated by them.

Learned counsel for the petitioner strenuously contended that the Settlement entered into between the parties under Section 12(3) of the Industrial Disputes Act,1947 read with the Circular issued by the respondent-Company dated 14-6-1993 makes it clear that the petitioners are entitled for being promoted to the post of Charge Hand (Mechanical) Grade 'C'. Whether the petitioners are promoted under Service Linked Upgradation (SLU) to Category VI or otherwise, it must be deemed that they have already been promoted to Category VI. Whether the petitioners are working in Category V or in Category VI, it is immaterial for the purpose of considering for promotion to the post of Charge Hand Grade 'C'.

Learned counsel appearing for the respondents reiterating the same stand as was taken in the counter affidavit stated that the petitioners were not promoted, but they have been placed in Category VI (Secured Placement under the cadre scheme) with effect from 1-4-1989. Therefore, the petitioners were never promoted to Category VI post and as such, they are not entitled for consideration for being promoted to the post of Charge Hand Grade 'C'.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and gone through the entire material made available on record.

The fact that the petitioners are possessing ITI qualification is not in dispute. It is also not in dispute that the petitioners were subsequently promoted to Category V. Further, it is not disputed that the petitioners were placed in Category VI under Service Linked Upgradation Scheme. Under these circumstances, it has to be examined whether the petitioners are entitled for being considered for promotion to the post of Charge Hand (Mechanical) Grade 'C' as per

Clause (viii) of the Memorandum of Settlement dated 3-3-1989 read with the clarification issued by the Company in the Circular dated 14-6-1993. Clause (viii) of the Settlement dated 3-3-1989 reads as under:

> "Eligibility for considering for promotion to Charge Hand in Grade C will be 4 years of service for I.T.I. candidates and 6 years for non-ITI candidates in Category VI, subject to vacancies. However, in view of present stagnation, Fitters in Category-VI with ITI qualification will be considered for placement in opencast in Excavation group-C based on the availability of vacancies and on assessment report and interview as one time measure. Such of the Fitters placed in Opencast will be required to undergo orientation training for one year with Excavation Group-C wages……."

The clarification issued by the Company, in this regard, also reads as under:

> "The eligibility for filling up of vacancies of Chargehand Grade 'C' and Tradesmen, Cat.VI is to be scrupulously followed as per the Memorandum of Settlement dt.3-3-1989. For the purpose of Chargehands Grade 'C' one should possess ITI certificate and have 4 years service in Cat.VI or Non-ITIs should have 6 years service in Cat.VI. For Tradesmen, Cat.VI one should have 5 years service in Cat.V. All the Tradesmen, Cat.VI (SLU) and Grade 'C' (SLU) are also eligible for selection of Tradesmen, Cat.VI and Chargehand, Gr.C as for all purposes they are accounted as Tradesmen, Cat.V and Cat.VI respectively."

The purport of the above Settlement and the Circular is that one should have four years of service in Category VI and also should have ITI qualification. The non-ITI candidates should have at least the service of 6 years in Category VI. It is not the case of the respondents that the petitioners are not working in the post of Category VI. It is their case that it is not promotion, but it is only a placement in Category VI. Learned counsel for the petitioners, in this regard, stated that this is nothing but promotion when there was a stagnation in Category V; therefore, they were placed in Category VI insofar as pay and allowances are concerned, but they were asked to work in Category

V. This itself shows that the petitioners were placed in Category VI and they had put in more than 4 years of service in Category VI and also possess the qualification of ITI certificate. Once this is so, as per Clause (viii) read with the clarification noticed above, petitioners are entitled for consideration for promotion to the post of Charge Hand (Mechanical) Grade 'C'. This was not properly considered by the respondents.

In the circumstances, the Writ Petition is allowed declaring that the petitioners are entitled for being considered for promotion to the post of Charge Hand (Mechanical) Grade 'C' and the respondents are directed to consider the case of the petitioners for being promoted to the post of Charge Hand (Mechanical) Grade 'C' as per the procedure. If they are eligible for promotion, they shall be promoted in the existing or future vacancies, but their seniority shall be counted on par with their juniors, who were promoted to the said post in the year 1997. No order as to costs.

17-1-2007

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